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| 10/039,097      | 01/02/2002  | David G. Luckstead   |                     | 8663             |

7590 11/18/2003

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| EXAMINER |
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FITZGERALD, JOHN P

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| ART UNIT | PAPER NUMBER |
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3637

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/039,097

Applicant(s)

LUCKSTEAD, DAVID G.

Examiner

John P Fitzgerald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 16-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

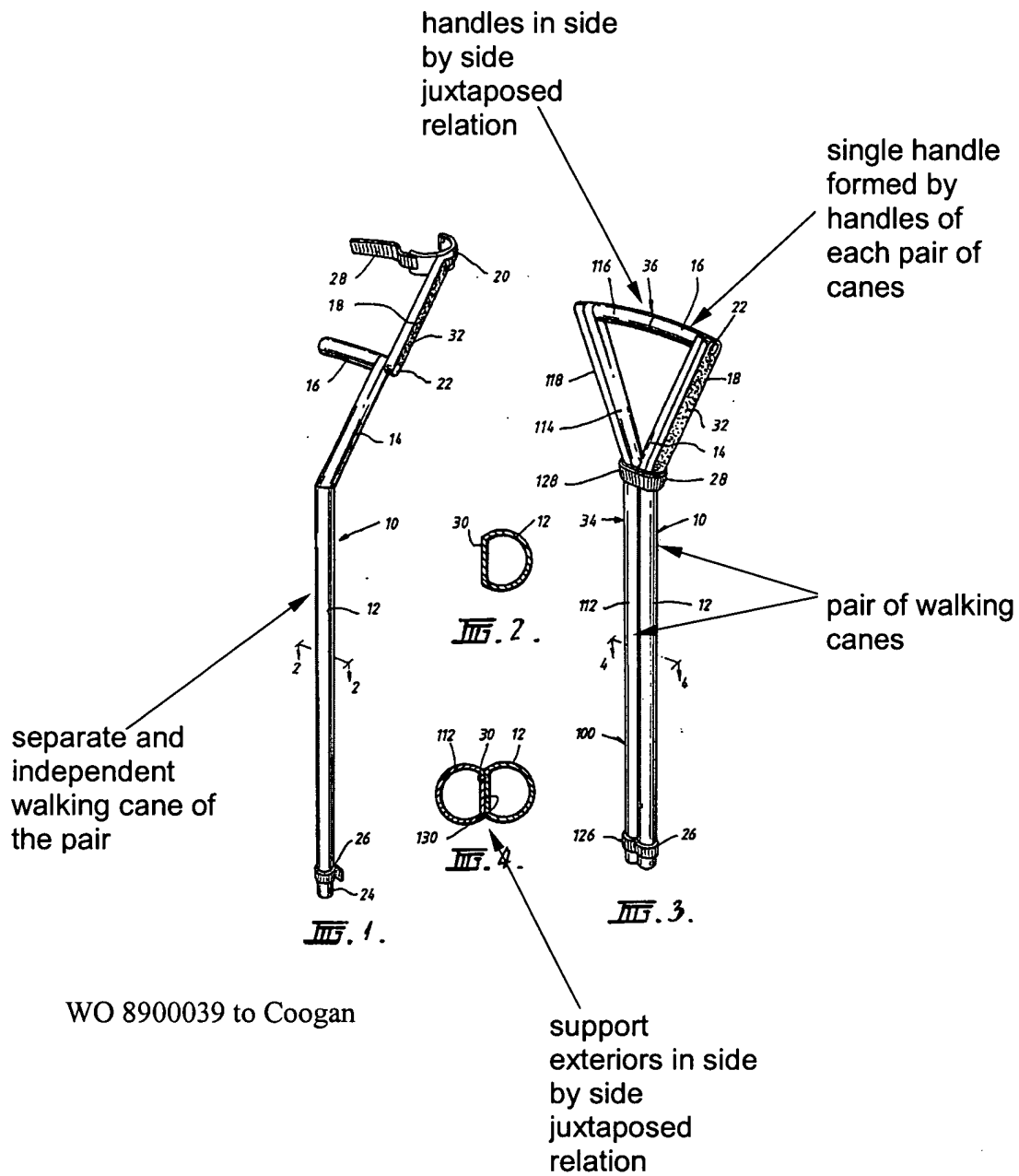
1. In view of applicant's amendment filed 19 August 2003, rejection of claim 8 under 35 U.S.C. § 112 is withdrawn.

### ***Claim Rejections - 35 USC § 102***

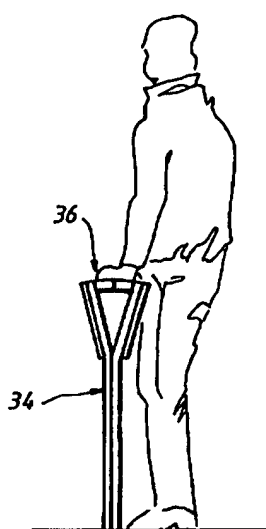
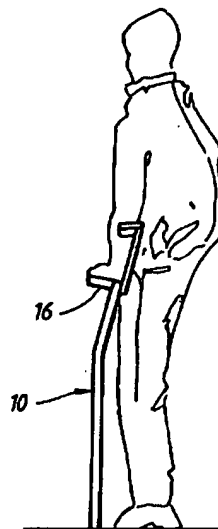
2. Claims 1, 4, 5 and 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO 8900039 to Coogan. WO 86900039 to Coogan discloses a convertible cane assembly (Figs. 1-4) comprising a pair of walking canes (10) each having an upright support (12, 112) providing an exterior; a foot (24) adjacent a lower end of the support and a handle (16, 116) adjacent an upper end of the support allowing the canes to be used separately and independently, and a connector (28, 128, 26, 126) detachably securing the canes together in a position wherein the support exteriors and the handles are in side-by-side juxtaposed relation (Fig. 4) so the canes, when secured together, can be used as a single cane; each of the pair of canes having a cross-sectional area that is half of the support cross-sectional area; the assembly providing a second handle (36) for grasping by the user and a second foot for contacting an underlying surface; wherein the first feet in the side-by-side position of the supports, provide a pair of flat surfaces (130) defining a single plane and thereby providing a combined foot for supporting the convertible cane when it is used as single cane a second foot (as recited in claim 4); wherein the handles, in the side-by-side position of the support exteriors, abut and provide a combined handle (36) for grasping by the user when the convertible cane is used as a single cane (Fig. 6) (as recited in claim 5);

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wherein the handles, in the side-by-side position of the support exteriors, are spaced apart and one of the handles provides a second handle for grasping by the user when the convertible cane is used as a single cane (Fig. 7) (as recited in claim 7).



WO 8900039 to Coogan

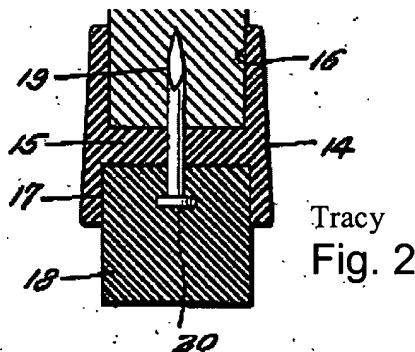
*FIG. 6.**FIG. 7.*

*Claim Rejections - 35 USC § 103*

3. Claims 2, 3, 6 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan as applied to claims 1 and 5 under 35 U.S.C. § 102(b) above, and further in view of Tracy. WO 8900039 to Coogan discloses a convertible cane assembly having all of the elements stated previously. WO 8900039 to Coogan does not expressly disclose a convertible cane assembly wherein each first foot comprises a resilient pad that is at least half of the cross-sectional area of the support; wherein the hand receiving section being not more than about 3" in width; and wherein the resilient feet comprise a rubber pad. Tracy teaches a walking aid (Fig. 2) having a resilient rubber pad (18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the resilient rubber pad taught by Tracy, modifying the first feet of the convertible cane assembly disclosed by WO 8900039 to Coogan, thus providing enhanced gripping means when contacting an underlying surface. In specific regards to the pad being at least half the cross section area of the support, it

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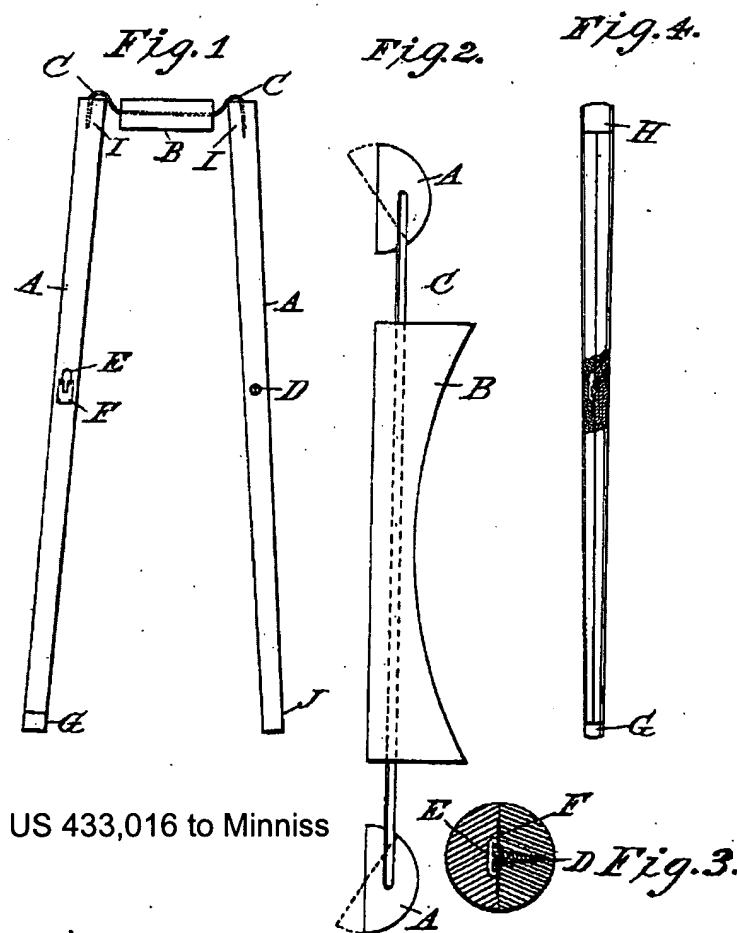
would be obvious to one of ordinary skill in the art that employing the resilient pad to the lower end of the support on each of the first feet, they would be inherently mach the cross-sectional shape, being at least half of the cross-sectional area of the support when the pair of canes are in side-by-side relation. In specific regards to claim 6, it would have been obvious to form the hand receiving section, of the combined handle, not more than about 3 inches in width since it is known that the handle must be adapted to fit a user's hand comfortably and stably for proper use. Furthermore, employing various sizes of the pair of cane handles is considered to be a design choice, well within the capabilities of one skilled in the art. Lastly, it is considered obvious and well known that resilient rubber pads and/or feet are employed on all types of canes, crutches and walking aids to enhance gripping means to the underlying surface.



4. Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan as applied to claim 1 under 35 U.S.C. § 102(b) above, and further in view of US 433,016 to Minniss. WO 8900039 to Coogan discloses a convertible cane assembly having all of the elements stated previously. WO 8900039 to Coogan further discloses the connector means could be replaced by other fastening or clamping means. WO 8900039 to Coogan does not expressly disclose a convertible cane assembly wherein the other connector means comprises a key hole slot on one of the canes and a headed pin on the other cane, friction between the pin and the slot

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acting to resist relative and vertical movement between the canes. US 433,016 to Minniss teaches a convertible cane assembly (Figs. 1-3) comprised of a pair of walking canes (A) in side-by-side relation wherein the flat surfaces defining a single plane have a connector means (D, E, F) comprising a key hole slot (E, F) on one of the canes flat surface and a headed pin (D) on the other cane, friction between the pin and slot acting to resist relative vertical movement between the canes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the connector means taught by US 433,016 to Minniss, modifying the convertible cane assembly disclosed by WO 8900039 to Coogan, for securing the pair of canes to each other in side-by-side relation, as suggested by WO 8900039 to Coogan.



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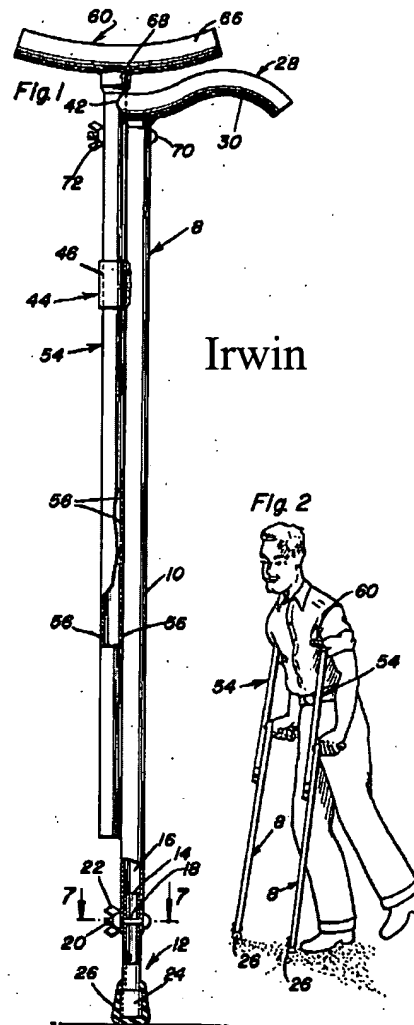
5. Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan as applied to claim 1 under 35 U.S.C. § 102(b) above, and further in view of US 432,759 to Minniss. WO 8900039 to Coogan discloses a convertible cane assembly having all of the elements stated previously. WO 8900039 to Coogan further discloses a convertible cane assembly wherein, in the side-by-side juxtaposed relation of the handles, the handles share a curved line. WO 8900039 to Coogan does not expressly disclose a convertible cane assembly wherein the handles are parallel, when in the side-by-side juxtaposed relation. US 432,759 to Minniss teaches a convertible cane assembly (Figs. 1-4) having two handles, wherein, in the side-by-side juxtaposed relation of the handles (Fig. 3), the handles are parallel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the handles of the convertible cane assembly disclosed by WO 8900039 to Coogan, employ the handles in parallel, as taught by US 432,759 to Minniss, thus providing a convertible cane assembly to function as a headrest.

6. Claims 16-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan and Irwin. WO 8900039 to Coogan discloses a convertible cane assembly (Figs. 1-4) comprising a pair of walking canes (10) each having an upright support (12, 112) providing an exterior; a foot (24) adjacent a lower end of the support and a handle (16, 116) adjacent an upper end of the support allowing the canes to be used separately and independently, and a connector securing (28, 128, 26, 126) the canes together in a side-by-side position where the support exteriors are in facing relation and the handles are in side-by-side juxtaposed relation (Fig. 4) so the assembly acts as a single cane with the juxtaposed handles providing a support (36) for grasping by a user's hand in the side-by-side position (as recited in claim 16), wherein



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the feet, in the side-by-side position of the support exteriors, provide a pair of flat surfaces (130) defining a single plane and thereby provide a support for a user's load (as recited in claim 17); wherein the handles, in the side-by-side position of the supports, provide a combined handle for grasping by the user when the convertible cane is used as a single cane (as recited in claim 18); wherein the handles, in the side-by-side position of the support exteriors, are spaced apart and one of the handles provides a second handle for grasping by the user when the convertible cane is used as a single cane; and the method of use of the pair of canes (Figs. 5-7). WO 8900039 to Coogan does not expressly disclose resilient feet. Irwin teaches a walking aid assembly (Figs. 1 and 2) having a support (10) with a resilient foot (26) at the lower end thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the resilient foot taught by Irwin, modifying the first feet of the convertible cane assembly disclosed by WO 8900039 to Coogan, thus providing an anti-skid tip (Irwin: col. 2, lines 17-19). In specific regards to claim 20, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the convertible cane assembly, either using them together as a single unit, or separately as disclosed by WO 8900039 to Coogan, or in any manner so desired.



7. Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan and Irwin, as applied to claim 16 under 35 U.S.C. § 102(b) above, and further in view of US 432,759 to Minniss. WO 8900039 to Coogan and Irwin disclose a convertible cane assembly having all of the elements stated previously. WO 8900039 to Coogan further discloses a convertible cane assembly wherein, in the side-by-side juxtaposed relation of the handles, the handles share a curved line. WO 8900039 to Coogan does not expressly disclose a convertible cane assembly wherein the handles are parallel, when in the side-by-side juxtaposed relation. US

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432,759 to Minniss teaches a convertible cane assembly (Figs. 1-4) having two handles, wherein, in the side-by-side juxtaposed relation of the handles (Fig. 3), the handles are parallel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the handles of the convertible cane assembly disclosed by WO 8900039 to Coogan, employ the handles in parallel, as taught by Us 432,759 to Minniss, thus providing a convertible cane assembly to function as a headrest.

### ***Response to Arguments***

8. Applicant's arguments filed 19 August 2003 have been fully considered but they are not persuasive. Applicant's argument that the Coogan reference no longer applies to the amended independent claims 1, 16 and 20, now reciting "handles, in the side-by-side position of the supports, are in side-by-side juxtaposed relation, is incorrect. The Coogan reference clearly meets the limitation of the claim (see rejection and Figures above), since the term juxtaposed is defined as "side-by-side," according to the Merriam Webster Dictionary, 10<sup>th</sup> Edition. The limitation of "juxtaposed" provides no further limitation on the convertible cane assembly.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.



JF

11/04/2003

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

